

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KLEEN PRODUCTS LLC, et al.  
individually and on behalf of all those  
similarly situated,

Plaintiff,

v.

PACKAGING CORPORATION OF  
AMERICA, et al,

Defendants.

Civil Case No. 1:10-cv-05711

Hon. Milton I. Shadur

**JOINT STATUS CONFERENCE REPORT NO. 3**

Plaintiffs and Defendants submit this joint report for the Court's consideration at the status conference scheduled for May 22, 2012 at 9:00 a.m. before the Hon. Milton I. Shadur. As noted below, Judge Nolan has conducted two days of evidentiary hearings and several status conferences related to discovery matters, with another status hearing to be held by Judge Nolan at 2:30 on May 22.

**A. Background**

*Kleen Products LLC* (Case No. 1:10-cv-05711), the first-filed case in these consolidated actions, was filed on September 9, 2010 and the related later-filed cases were subsequently reassigned to this Court. On November 8, 2010, Plaintiffs filed a Consolidated and Amended Complaint ("Complaint") (Dkt. 65). On January 14, 2011, Defendants filed motions to dismiss.

On April 8, 2011, the Court entered a memorandum Opinion and Order denying Defendants' motions (Dkt.193). On May 2, 2011, Defendants filed their Answers.<sup>1</sup>

On May 9, 2011, the Court held a status conference and indicated its preference that counsel establish a case management schedule amongst themselves and that issues requiring Court intervention be handled by noticed motion. The Court also said that it would set periodic status conferences. The Court conducted another status conference on August 16, 2011. Prior to the August status conference, the parties submitted a joint status conference statement (Dkt. 222), and at the status conference the Court requested that the parties continue that practice, stating that it would review the joint status conference statements in advance and unless the Court advised otherwise, counsel would not have to appear and another status conference date would be calendared.<sup>2</sup> At the December 15, 2011 status conference the Court decided to refer discovery to the Hon. Nan Nolan including the following topics set forth in *Joint Status Conference Report No. 2* (Document No. 265): (1) Plaintiffs' Request for Defendants' to Provide Indexes for Their Document Production, (2) Electronically Stored Information Search Methods, (3) Electronically Stored Information Search Scope, and (4) Relevant Time Periods. The Court subsequently postponed the status conference that had been set for March 15, first resetting it for April 30 and then for May 22.

#### **B. Proceedings before Magistrate Judge Nolan**

Judge Nolan held her first status conference with the parties on January 17, 2012, set a schedule for briefing on the discovery issues and held the first day of an evidentiary hearing on February 21 and a second day on March 28. Five witnesses testified during the two days of

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<sup>1</sup> Pursuant to the unopposed motion of Defendant Smurfit Stone (Dkt. 202), on June 16, 2011, the Court allowed RockTenn CP, LLC to be substituted as a defendant in place of Smurfit-Stone Container Corp (Dkt. 205).

<sup>2</sup> Transcript of Proceedings, August 16, 2011, pp. 6:19-7:28.

hearings and, at the conclusion of the March 28 evidentiary hearing, there remained the continued cross-examination of one witness and Plaintiffs indicated that they intended to call two more witnesses (one an expert to be recalled to testify in response to testimony of an expert called for Defendants).

At the conclusion of the March 28 session, Judge Nolan met with the lawyers for all parties and encouraged them to explore whether a negotiated resolution could be reached on the issues before her. Judge Nolan held subsequent status conferences to address the discovery issues on April 3 and on April 19, and the parties are scheduled to meet with Judge Nolan again on May 22 at 2:30 p.m. Excerpts from the transcripts of the post-hearing session on March 28, the April 3 hearing and the April 19 hearing are attached hereto as Exhibits A, B and C. Prior to the April 19 hearing, separate in-person meet and confer sessions occurred between Plaintiffs and each Defendant. Another round of in-person meet and confer sessions began on May 16 and are scheduled for May 18, 21 and 22. The parties also have exchanged correspondence and other information in a good faith attempt to address the discovery disputes.

### **C. Discovery**

To date, Plaintiffs have produced approximately 25,000 pages of documents and Defendants have produced documents believed to be the equivalent of more than 3 million pages. Plaintiffs' ESI is being processed by a vendor for production to Defendants, and Plaintiffs expect to produce additional responsive documents within the next few weeks.

Defendants' productions include both hard copy documents and ESI, which includes e-mails, Word documents, electronic calendars and spreadsheets. Defendants have indicated that they expect to continue making substantial productions over the next few months.

Plaintiffs have taken Rule 30(b)(6) depositions of Defendants International Paper, Temple Inland, Packaging Corporation of America, RockTenn and Weyerhaeuser. Defendants have taken a Rule 30(b)(6) deposition of Plaintiff Chandler Packaging.

**D. CONCLUSION**

The parties request that the next status conference be scheduled for a date in mid to late July and approximately each 45 days thereafter until circumstances change.

Dated: May 17, 2012

Respectfully submitted,

/s/ Michael J. Freed

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*Report only, on behalf of Defendants*  
PACKAGING CORPORATION OF AMERICA;  
CASCADES CANADA, INC.;  
INTERNATIONAL PAPER COMPANY;  
NORAMPAC HOLDINGS U.S. INC.;  
WEYERHAEUSER COMPANY; GEORGIA  
PACIFIC LLC; TEMPLE-INLAND INC.; and  
ROCKTENN CP, LLC